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3 FILED

4 MAY 16 1996

5 Commission on
6 Judicial Performance

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8
9 STATE OF CALIFORNIA
10 BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

11
12 INQUIRY CONCERNING A JUDGE,

13 No. 136.

14 FIRST AMENDED NOTICE OF
15 FORMAL PROCEEDINGS

16 To: JUDGE JOHN T. BALL, a judge of the Santa Clara County Municipal Court from July
17 1986 to March 1989, and a judge of the Santa Clara County Superior Court from March 1989 to the
18 present and at all relevant times therein:

19 Preliminary investigation pursuant to California Rules of Court, rule 904 and 904.2, having
20 been made, the Commission on Judicial Performance has concluded that formal proceedings should
21 be instituted to inquire into the charges specified against you herein.

22 By the following allegations, you are charged with wilful misconduct in office, conduct
23 prejudicial to the administration of justice that brings the judicial office into disrepute, and improper
24 action within the meaning of Article VI, section 18 of the California Constitution providing for
25 removal, censure, or public or private admonishment of a judge, to wit:

COUNT

In 1993, in the case of *People v. Collazo*, you ordered and held a hearing that was either for a purpose not authorized by law, and which you should have known was contrary to law, and was beyond your lawful authority and created an adverse public opinion of the judiciary, or was otherwise improper. The particulars are as follows (the transcript of the hearing, which was held on December 17, 1993, is attached hereto and incorporated by reference):

On September 17, 1993, following reversal on procedural grounds of a first degree murder conviction, defendant Dennis Collazo appeared before you with counsel and, pursuant to agreement by the parties, pleaded guilty to attempted murder, waiving credit for 11 years of time served and also waiving appellate rights. He was sentenced to 12 years confinement, with 90 days credit.

On October 7, 1993, Mr. Collazo was officially discharged from prison (reportedly due to the belief of the Department of Corrections that the waiver of credit for time served in his plea bargain was illegal). Between October 7 and October 23, 1993, you learned of the release. You then contacted the Department of Corrections about the release, which you believed to be an error. The Department then notified the San Jose police that Mr. Collazo was a convicted murderer and a "state prison escapee." On October 23, at about 12:30 a.m., Mr. Collazo was rearrested at his home by the San Jose Police Department's "Mobile Emergency Response Group and Equipment" squad and returned to prison.

The treatment of Mr. Collazo as a "state prison escapee," following his formal discharge from prison, generated adverse publicity to the effect that the authorities had mishandled and overreacted to the matter. Mr. Collazo's family and friends wrote to you, urging you to return him to the community. You also received and considered a copy of a petition, signed by some 280 local citizens, asking Governor Wilson to provide relief that would "put an end to this tragedy."

Following these developments, you met with the attorneys who had negotiated the plea bargain, Deputy District Attorney Peter Waite and Deputy Public Defender John Vaughn. You advised them that you were concerned about the press reports and public perception, that you wanted to explain the situation to the public, on the record, and that you wanted Mr. Collazo to be present. Toward that end, you proposed to hold a hearing under section 1170(d) of the California Penal Code, which provides for "recall" of a sentence in order to "resentence the defendant". The

1 attorneys objected and asked you not to pursue your hearing, because you did not intend to
2 resentence Mr. Collazo, but rather to address the public about what occurred at the original
3 sentencing and about the erroneous release from custody. It was pointed out by Mr. Vaughn that,
4 because Mr. Collazo's presence in court was required under section 1170(d), your proposal would
5 result in loss of privileges acquired by Mr. Collazo through his status as a model prisoner (i.e.,
6 single-cell housing and a prison job).

7 On November 23, you set a hearing in the case for December 17, "pursuant to PC 1170(d)".
8 Thereafter, you received and considered more letters from the public, expressing hope that you
9 would return Mr. Collazo to his family.

10 At the hearing on December 17, Mr. Waite appeared for the People and Mr. Vaughn
11 appeared for Mr. Collazo. At the start of the hearing, you explained that the hearing was called on
12 the court's own motion, "to place upon the record for all interested parties precisely what occurred
13 in this matter so that there will be no question in anyone's mind." (Tr. at 1:21-23.) You then set
14 forth the events that preceded the plea bargain and discussed your review and approval of that
15 bargain, and your belief that the bargain met legal requirements. You stated that the Department of
16 Corrections and "local authorities" were solely responsible for Mr. Collazo's release and rearrest,
17 thus "causing this heartbreak, this disappointment." (Tr. at 2:12-6:21.)

18 Mr. Vaughn objected to your remarks. (Tr. at 6:22.) You continued, noting that you had
19 been "inundated by correspondence" (Tr. at 7:12-13) seeking Mr. Collazo's release and that you had
20 received a Notice of Appeal filed on behalf of Mr. Collazo alleging error in sentencing. You
21 explained that you had decided "to recall this matter" (Tr. at 7:20-21) for the following purposes:

22 COURT: Having all this before me, I felt it was appropriate to recall this
23 matter to allow counsel for the defendant, if he feels appropriately so
24 constrained, or counsel for the People, to state any objection they had to
25 the irregularities, the procedure or anything else that was involved in this
26 matter. And I have taken the power of my office to call this hearing so that
27 the vast number of people involved in this may have their minds put at ease
28 as to what has been done, why it has been done, in these proceedings. (Tr.
29 at 7:19-28.)

1 Mr. Vaughn then moved for resentencing. Mr. Waite responded that you "never indicated"
2 that any resentencing would occur. You confirmed that you never intended to resentence Mr.
3 Collazo and that you believed, in light of the plea bargain, that you lacked any power to do so:

4 COURT: Well, I assume, Mr. Vaughn, that your request for a
5 resentencing is normally only due to a sentencing discretion that the Court
6 exercised in the original sentence. The reason that I exercised my power to
7 recall this matter was not that I intended to exercise my discretion any
8 differently because by virtue of the plea bargain that was entered into on
9 behalf of you, your client and the people, I do not believe that I would be in
any way able to unilaterally resentence based upon a clear bargain that was
struck by you and the People.

10 VAUGHN: A couple of facts, Your Honor, if I might interrupt. Both the
11 district attorney and I urged this Court not to have this hearing.

12 COURT: That's true.

13 VAUGHN: The Court is having this hearing on its own motion pursuant
14 to Penal Code Section 1170(d), and it is only that section that gave this
15 Court jurisdiction to recall Mr. Collazo.

16 COURT: That's right.

17 VAUGHN: It does not permit the Court to recall Mr. Collazo to have a
18 venting session or a let's-hold-hands-and-feel-better-[about]-what-has-
happened session.

19 COURT: To the contrary, Mr. Vaughn. The Court has the power to recall
20 it for any reason it sees fit.

21 VAUGHN: Not under 1170(d), Your Honor.

22 COURT: The secondary reason is that apparently you have alleged, or
23 your client -- and I'll be happy to hear from you at this time if you wish to
24 address it -- that there was some impropriety in the original sentencing
25 which you are attempting to seek appellate relief; and my primary reason,
26 other than as you improperly characterized the venting or hand holding, is
27 to allow you to place upon the record, if you're able to do so, any
28 objections or improprieties you feel were present in the original sentence
29 which was imposed.

1 VAUGHN: Your Honor, with all due respect, I have no objections to
2 everything that happened up to and including the events in this courtroom
3 on September 17th, 1993, neither I or my client raise objections.

4 (Tr. at 9:10-10:20.)
5

6 Thereafter, Mr. Vaughn asked to submit testimony from Mr. Collazo's supporters. The
7 matter was put over until that afternoon. At the afternoon session, you repeated that you were not
8 "exercising any discretion" to modify the sentence. You also repeated your intent to address the
9 "public perception of these proceedings." You also indicated that you "were ready, willing and able
10 to respond to any request for clarification or correction of any sentencing error that was committed
11 by the Court at the time of sentence." (Tr. at 11:15-16:21.) You did not identify any such "error."

12 Mr. Vaughn said that he would not seek resentencing if you would indicate that you had
13 abused your discretion with respect to 1170(d) and that you "had no intent to resentence Mr.
14 Collazo." You responded that the law permitted "simply a reexamination" of the sentence on "any
15 grounds that [the court] feels is appropriate." You again repeated your intent to assure the public
16 that you had treated Mr. Collazo fairly, noting press coverage and correspondence indicating a public
17 perception of "a gross injustice." (Tr. at 18:2-20:17.)

18 Following an exchange with Mr. Vaughn about the circumstances of Mr. Collazo's rearrest,
19 you again reiterated that your only purpose at the hearing was to respond to the Notice of Appeal
20 and the public criticism:

21
22 COURT: The only issue before me is the appropriateness of Mr. Collazo's
23 sentence, and I'm responding two-fold to that concern; one, in terms of the
24 Notice of Appeal which I am in receipt; and, secondly, what I perceive to
25 be a public misunderstanding of these proceedings. . . . I am prepared to
26 proceed on that basis.

27 (Tr. at 22:19-23:17.)
28

29 Mr. Vaughn again attempted to address resentencing. You responded that to do so would be
improper, given the plea bargain. You repeated that Mr. Collazo had been fairly treated. You then

1 denied the resentencing request. (Tr. at 23:18-25:25.) Mr. Vaughn then noted the "great cost" of
2 the hearing to Mr. Collazo, since its scheduling automatically deprived him of his single-cell housing
3 and prison job. You stated your "regret" and said you would call the Director of the Department of
4 Corrections in an attempt to restore those privileges.

5 At Mr. Vaughn's request, you allowed Mr. Collazo to address the court. You then reiterated
6 your refusal to resentence him (Tr. at 31:17-32:25). Shortly thereafter, the hearing concluded.

7 Your actions as described above reflect an improper injection of yourself in a proceeding that
8 was noticed for appeal, for reasons other than resentencing under Penal Code section 1170(d). Your
9 remarks at the December 17 hearing regarding Mr. Collazo's plea bargain and the propriety of the
10 earlier proceedings were made with the awareness that Mr. Collazo had filed his Notice of Appeal.
11 Those comments, although made during a court hearing, nonetheless were improper, because that
12 hearing was convened not for any resentencing purpose under Penal Code section 1170(d), but
13 primarily for improper purposes, to wit: to provide you with a forum for publicly commenting on the
14 original sentence, in response to public perceptions of that sentence, and in response to a notice of
15 appeal by Mr. Collazo.

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20 YOU ARE HEREBY GIVEN NOTICE, pursuant to California Rules of Court, rule 905, that
21 formal proceedings have been instituted and shall proceed in accordance with California Rules of
22 Court, rules 901-922.

23 Pursuant to California Rules of Court, rule 906, you have the right to file a written answer to
24 the charges against you within fifteen (15) days after service of this notice upon you. An original and
25 eleven (11) legible copies of the answer may be filed with the Commission on Judicial Performance,
26 101 Howard Street, Suite 300, San Francisco, California 94105. The answer shall be verified and
27 shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. The notice of formal
28 proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no
29 motion or demurrer shall be filed against any of the pleadings.

1 This notice of formal proceedings may be amended pursuant to California Rules of Court,
2 rule 911.

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5 BY ORDER OF THE COMMISSION ON JUDICIAL PERFORMANCE

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8 DATED: 4/29/96

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12 CHAIRPERSON
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PROOF OF SERVICE BY MAIL

I, Kathleen Vota, declare:

I am over the age of 18 years and am not a party to the within cause. My business address is 101 Howard Street, Suite 320, City and County of San Francisco, CA 94105, where this mailing occurs. That on the 2nd day of May, 1996, I served the following document:

FIRST AMENDED NOTICE OF FORMAL PROCEEDINGS

to the following people:

David R. Sylva, Esq.
1925 S. Winchester Blvd.
Suite 204
Campbell, CA 95008-1038

by placing true copies thereof in sealed envelopes with first class postage thereon fully prepaid, by addressing said envelopes as set forth above, and by depositing said envelopes in the U.S. Mail.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed this 2nd day of May, 1996.


KATHLEEN VOTA